**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DISTRIBUTED MEDIA SOLUTIONS, LLC,
 	
    Plaintiff,
 	
v.
 	
DEEZER, S.A.,
 	
    Defendant.
	CIVIL ACTION NO. 2:22-cv-254
	
	JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Distributed Media Solutions, LLC ("DMS" or "Plaintiff") files this Complaint for patent infringement against Deezer, S.A. ("Deezer" or "Defendant") and states as follows:

NATURE OF THE ACTION

1.   This is a civil action for patent infringement under the patent laws of the United States of America, 35 U.S.C. § 1 *et seq.*

2.   DMS is the owner of all right, title, and interest in U.S. Patent Nos. RE47,053 (the "'053 Patent") and 8,122,004 (the "'004 Patent") (collectively, "the Asserted Patents"), which have been attached as Exhibits A and B and incorporated herein by reference.

3.   Defendant Deezer has infringed one or more claims of the Asserted Patents by making, using, offering to sell, and selling within the United States, including in this District, certain products and services. DMS seeks to recover monetary damages, attorneys' fees, and costs.

THE PARTIES

4.   DMS is a Georgia limited liability company with a principal place of business at 4725 Peachtree Corners Circle, Suite 230, Peachtree Corners, GA 30092.

5.   On information and belief, Defendant Deezer is a company organized under the laws of France, with its principal place of business at 24 rue de Calais 75009 Paris, France. On information and belief, Defendant Deezer offers its products and/or services, including those accused herein of infringement, to customers and potential customers located in Texas and in this District. Deezer also directs advertisements to residents of the state of Texas. For example, Deezer sponsored a "Together We Make Magic" concert event in Houston, Texas. *See* https://www.prnewswire.com/news-releases/deezer-surprises-houston-high-school-with-live-performance-by-top-charting-latin-band-cnco-300962400.html.

JURISDICTION AND VENUE

6.   The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7.   This Court has personal jurisdiction over Deezer in accordance with due process and/or the Texas Long Arm Statute because, among other things, Deezer does business in this State. For example, Deezer has engaged in continuous, systematic, and substantial activities with this State, including the substantial marketing, use, and sale of products and services with this State and this District. This Court has personal jurisdiction over Deezer because it has committed acts giving rise to DMS's claims for patent infringement within and directed to this District and has derived substantial revenue from its goods and services provided to individuals in this State and this District.

8.   Defendant has committed acts of infringement in violation of 35 U.S.C. § 271 within the Eastern District of Texas. Defendant has in the past made, used, marketed, distributed, offered for sale, sold, and/or imported infringing products, and performed infringing methods, in the State of Texas and in this District. Accordingly, Defendant has in the past engaged in

infringing conduct within and directed at or from this District. Additionally, Defendant has purposefully and voluntarily placed its infringing products into the stream of commerce with the expectation that its infringing products will be used in this District. The infringing products have been distributed to and used in this District. Defendant's acts have caused injury to Plaintiff, including within this District.

9.   Venue is proper in this District under the provisions of 28 U.S.C. §§ 1391(b), (c), (d) and/or 1400(b) at least because Deezer is a foreign corporation organized under the laws of France.

U.S. PATENT NO. RE47,053

10.   On September 18, 2018, the United States Patent and Trademark Office duly and legally issued the '053 Patent, entitled "Method and System for Subscriber-Based Audio Service Over a Communication Network" after a full and fair examination.

11.   Exhibit A is a true and correct copy of the '053 Patent.

12.   The '053 Patent is valid and enforceable under United States patent laws.

13.   Plaintiff is the owner of the '053 Patent, having received all right, title and interest in and to the '053 Patent from the previous assignee of record.

14.   Plaintiff possesses all rights of recovery under the '053 Patent, including the exclusive right to recover for past infringement.

U.S. PATENT NO. 8,122,004

15.   On February 21, 2012, the United States Patent and Trademark Office duly and legally issued the '004 Patent, entitled "Generating and Providing Rich Media Presentations Optimized for a Device Over a Network" after a full and fair examination.

16.   Exhibit B is a true and correct copy of the '004 Patent.

17.   The '004 Patent is valid and enforceable under United States patent laws.

18.   Plaintiff is the owner of the '004 Patent, having received all right, title and interest in and to the '004 Patent from the previous assignee of record.

19.   Plaintiff possesses all rights of recovery under the '004 Patent, including the exclusive right to recover for past infringement.

<div align="center">**THE ASSERTED PATENTS**</div>

20.   The claims of the Asserted Patents are directed to patent-eligible, non-abstract subject matter under 35 U.S.C. § 101. They are not directed to abstract ideas, and the claimed technology consists of ordered combinations of features and functions that, at the time of the invention, were not, alone or in combination, well-understood, routine, or conventional.

21.   The Asserted Patents provide technical and unconventional solutions to existing shortcomings of the prior art. The specifications of the Asserted Patents disclose shortcomings in the prior art and further explain, in detail, the technical and unconventional way the claimed inventions resolve or overcome these shortcomings.

22.   For example, the '053 Patent explains that "an improved method for delivering music to users is desired that protects the rights of the owners of the music." '053 Patent at 1:48-50. As part of the solution to this problem, the '053 Patent discloses an invention where a subscriber-based service provides "audio files to a client device connected to a server through a network." *Id*. at 2:56-59.

23.   The '004 Patent explains that one problem with existing systems was that the number of different systems and media files available resulted in users being "constantly bombarded with different requirements" to receive and play those files. '004 Patent at 1:20-52.

This problem was solved, in part, through the use of an "attribute inquiry system" that determines certain configuration information prior to providing the requested content. *Id.* at 13:28-63.

DEEZER'S INFRINGING PRODUCTS AND ACTIVITIES

24.   Deezer provides an on-demand audio-streaming platform ("the Accused Product") that enables its users to create and share playlists of audio content. In addition, the Accused Product monitors and analyzes streaming audio data to determine royalties for content creators and providers.
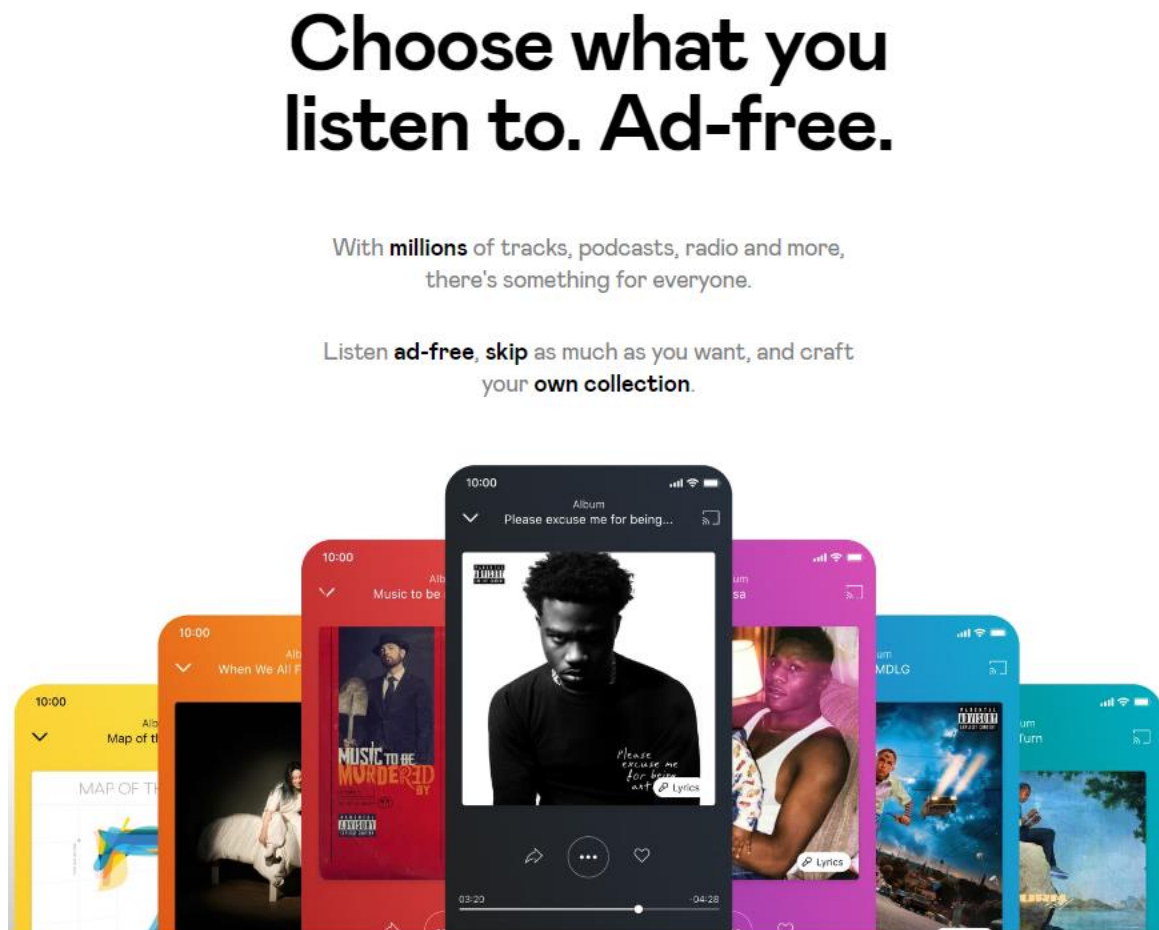
https://www.deezer.com/us/offers/premium?utm_campaign=acq_us_perfmax_web_all_perf_tnb-directsub&utm_content=alloffers&utm_medium=display_&utm_source=adwords&utm_term=premium-generic&gclid=CjwKCAjw7vuUBhBUEiwAEdu2pMMMmOhw5_u7nNhMK3g5yLgVizisCGURWr3lmr2EEdmRnF__0j8wvBoC0O0QAvD_BwE (last visited June 7, 2022).

25.   In addition, the Accused Product is enabled to be implemented in a browser. When run on a browser, the Accused Product ascertains certain browser and/or system information to make determinations regarding the content provided to the browser.
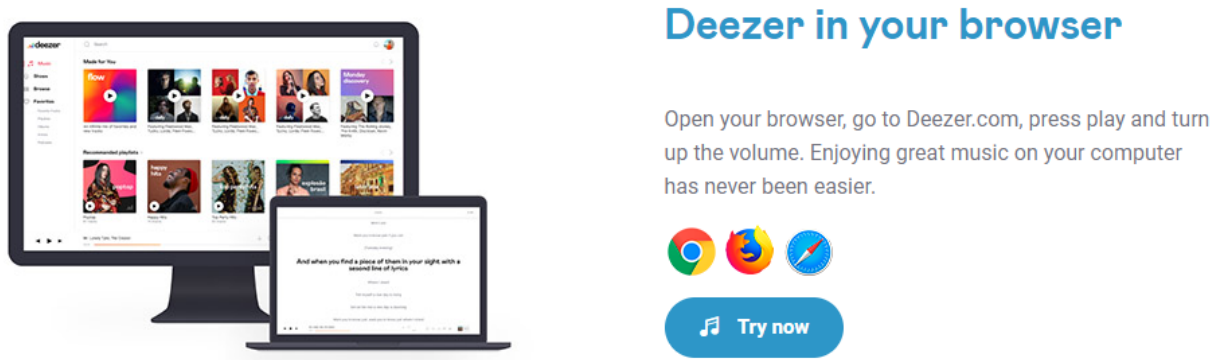
https://www.deezer.com/us/devices (last visited on June 7, 2022).

26.   On information and belief, Deezer is focused on growing its user subscriber base in the United States. *See, e.g.*, https://musically.com/2022/04/20/deezers-spac-announcement-breaks-down-its-recent-growth/ (last visited June 7, 2022).

COUNT I: INFRINGEMENT OF U.S. PATENT NO. RE47,053

27.   Plaintiff incorporates by reference and re-alleges the foregoing paragraphs of this Complaint as if fully set forth herein.

28.   Defendant has directly infringed at least claim 22 of the '053 Patent in violation of 35 U.S.C. § 271 *et seq.*, by making, using, offering for sale, or selling in the United States, and/or importing into the United States without authority or license the Accused Product.

29.   Defendant directly infringes at least claim 22 of the '053 Patent by performing all the limitations of that claim. For example, claim 22 of the '053 Patent recites:

A method, comprising:

receiving, at a computer system, a request from a first user of a music streaming service to send a playlist of music files to a second user of the music streaming service, wherein the playlist was previously created by the first user;

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in response to receiving the request from the first user, sending, by the computer system, a message identifying the playlist to the second user;

receiving, at the computer system, a request from the second user to begin streaming at least a portion of the playlist;

in response to receiving the request from the second user, streaming, by the computer system, one or more of the music files included in the playlist to the second user;

storing, by the computer system, play-out information indicative of an amount of the streaming of the music files in the playlist to the second user, wherein the storing includes inserting records into a table of streamed music files, wherein the records include a first record specifying, for a particular one of the music files in the playlist streamed to the second user, 1) a pointer to the particular music file, 2) a duration of play-out of the particular music file streamed to the second user, and 3) an owner identifier indicating an owner of the particular music file to receive payment; and

based on the play-out information, allocating, by the computer system, payments for owners of the music files in the playlist that have been streamed to the second user, wherein the allocating includes determining a total duration of play-out of the particular music file based on a plurality of durations of play-out of the particular music file included in the table.

30.   As in claim 22 of the '053 Patent, the Accused Product receives, at a computer system, a request from a first user of a music streaming service (*e.g.*, Deezer) to send a playlist of music files to a second user of the music streaming service, wherein the playlist was previously created by the first user.

How to instantly share Deezer content

iOS	Android	Desktop
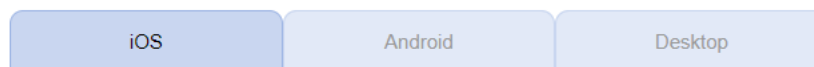
Deezer's **Share** ⬆ feature allows you to share any track, album, artist, playlist, podcast or podcast episode you love (or have just discovered). Use Share to connect to a range of apps and messengers with these steps:

1. Select the content you want to share
2. In the player, select the **Share** ⬆ icon
3. Within the **Share options** menu, select where you would like to share your content and, if necessary, the contact to send the content to

https://support.deezer.com/hc/en-gb/articles/115004247825-Share-Deezer-Content   (last   visited

on June 7, 2022).

https://support.deezer.com/hc/en-gb/articles/115004247825-Share-Deezer-Content   (last   visited

on June 7, 2022).

     31.   As in claim 22 of the '053 Patent, in response to receiving the request from the first

user, the Accused Product sends, by the computer system, a message identifying the playlist to the

second user. For example, the Accused Product can send a message identifying the playlist to a

second user through various means, including through the Deezer app and via SMS.

https://support.deezer.com/hc/en-gb/articles/115004247825-Share-Deezer-Content (last visited on June 7, 2022).

32.   As in claim 22 of the '053 Patent, the Accused Product receives, at the computer system, a request from the second user to begin streaming at least a portion of the playlist.

I. Who can view my Deezer music playlist?

By default, any playlist you create will be public. When you make playlists, any Deezer user can have access unless you change the privacy settings.

https://support.deezer.com/hc/en-gb/articles/115003746149-Make-playlists-or-edit-an-existing-Deezer-playlist (last visited on June 7, 2022).

33.   As in claim 22 of the '053 Patent, in response to receiving the request from the second user, the Accused Product streams, by the computer system, one or more of the music files included in the playlist to the second user.

Launching music on Deezer

Simone
9 months ago · Updated

In this article, we discuss launching music (albums, artists, playlists and favorite tracks) on Deezer mobile and desktop app. Deezer Premium, Deezer Student, Deezer Family and Deezer HiFi subscribers can launch music on-demand in both consecutive order ▶ and shuffle ⤨.

Note: Deezer Free users can only launch certain playlists in consecutive order on mobile

Launching music on mobile

When browsing music on mobile, you will see two types of **PLAY** buttons.

The icon next to **PLAY** indicates what order the songs will play in:

- ▶ **PLAY** *Consecutive*: tracks are played, one after another in the order tracks are displayed*
- ⤨ **PLAY** *Shuffle*: tracks are rearranged and played in non-consecutive order

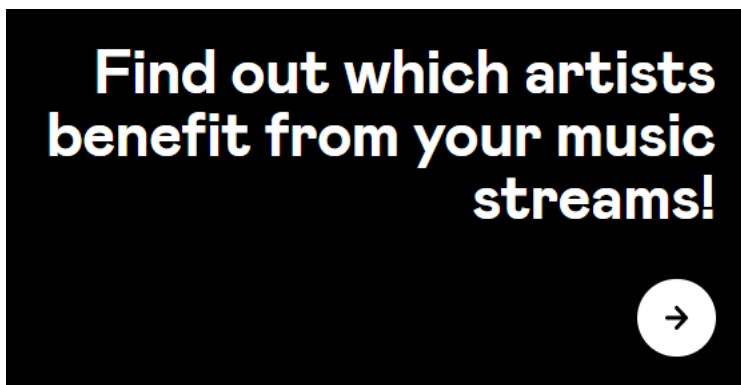*This includes any sorting applied: **Recently added**, **Default** or alphabetical order

https://support.deezer.com/hc/en-gb/articles/115004263325-Launching-music-on-Deezer-   (last visited on June 7, 2022).

34.   As in claim 22 of the '053 Patent, the Accused Product stores, by the computer system, play-out information indicative of an amount of the streaming of the music files in the playlist to the second user, wherein the storing includes inserting records into a table of streamed music files, wherein the records include a first record specifying, for a particular one of the music files in the playlist streamed to the second user, 1) a pointer to the particular music file, 2) a duration of play-out of the particular music file streamed to the second user, and 3) an owner identifier indicating an owner of the particular music file to receive payment. For example, Deezer pays artists based on plays of content.

With UCPS (User Centric Payment System) your money only goes to the artists you stream.

Sarah streams Artist A 90 times

UCPS

Artist A

John streams Artist B 10 times

Artist B
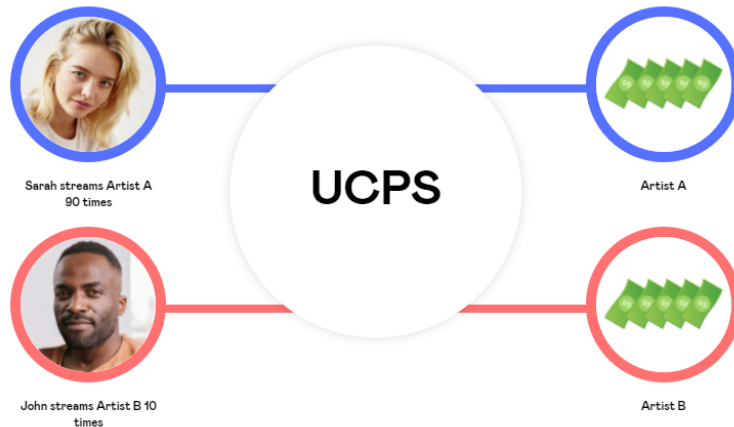
https://www.deezer.com/en/ucps (last visited June 7, 2022). Deezer provides functionality that enables users to determine which specific artists benefit from their personal streaming, which on information and belief evidences that Deezer maintains information relating to specific songs, duration of play, and owner of the song.

Find out which artists benefit from your music streams!

https://www.deezer.com/en/ucps (last visited June 7, 2022). On information and belief, Deezer

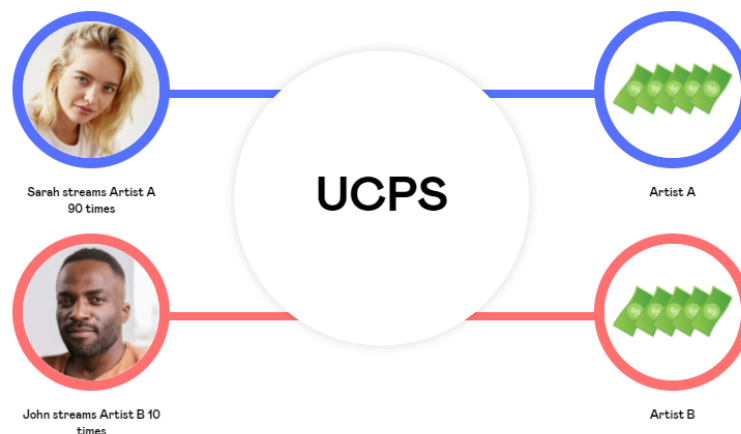tracks duration of play because songs need to stream for at least 30 seconds to count as a stream.

How long do you have to listen to a song for it to count as a stream?

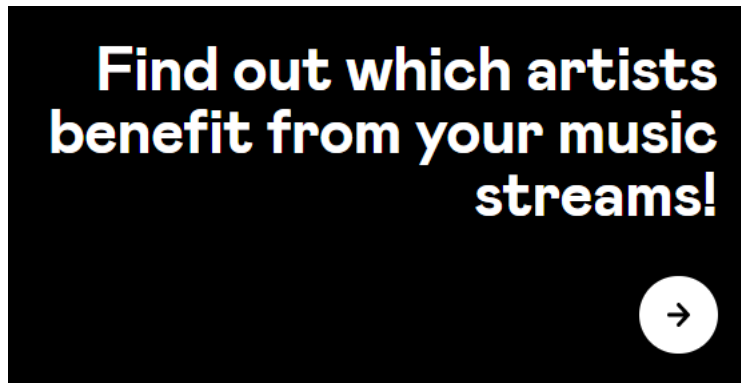Once a song has been played for 30 seconds or longer it counts as a stream.

https://routenote.com/blog/if-i-listen-to-a-song-on-deezer-will-it-count-as-a-stream/ (last visited

June 7, 2022).

  35. As in claim 22 of the '053 Patent, based on the play-out information, the Accused

Product allocates, by the computer system, payments for owners of the music files in the playlist

that have been streamed to the second user, wherein the allocating includes determining a total

duration of play-out of the particular music file based on a plurality of durations of play-out of the

particular music file included in the table. For example, Deezer pays artists based on plays of

content.

With UCPS (User Centric Payment System) your money only goes to the artists you stream.

https://www.deezer.com/en/ucps (last visited June 7, 2022). Deezer provides functionality that

enables users to determine which specific artists benefit from their personal streaming, which on

information and belief demonstrates that Deezer maintains information relating to specific songs,

duration of play, and owner of the song.

https://www.deezer.com/en/ucps (last visited June 7, 2022). On information and belief, Deezer

tracks duration of play because songs need to stream for at least 30 seconds to count as a stream.

How long do you have to listen to a song for it to count as a stream?

Once a song has been played for 30 seconds or longer it counts as a stream.

https://routenote.com/blog/if-i-listen-to-a-song-on-deezer-will-it-count-as-a-stream/   (last visited

June 7, 2022).

36.   Defendant makes, uses, sells, and/or offers to sell the Accused Products which

practices at least claim 22 of the '053 Patent.

37.   In violation of 35 U.S.C. § 271, Defendant has been directly infringing the '053

Patent, including through its own use, testing, and sale of the Accused Products.

38.   Defendant has had knowledge of infringement of the '053 Patent at least as of the

service of the present Complaint.

39.   Defendant has directly infringed at least one claim of the '053 Patent by making, using, offering for sale, and selling the Accused Product without authority in the United States. As a direct and proximate result of Defendant's direct infringement of the '053 Patent, DMS has been damaged.

40.   By engaging in the conduct described herein, Defendant has injured DMS and is thus liable for infringement of the '053 Patent, pursuant to 35 U.S.C. § 271.

41.   Defendant has committed these acts of infringement without license or authorization.

42.   As a result of Defendant's infringement of the '053 Patent, Plaintiff has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

43.   Plaintiff reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the claim chart that it provides with this Complaint.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 8,122,004

44.   Plaintiff incorporates by reference and re-alleges the foregoing paragraphs of this Complaint as if fully set forth herein.

45.   Defendant has directly infringed at least claim 1 of the '004 Patent in violation of 35 U.S.C. § 271 *et seq.*, by making, using, offering for sale, or selling in the United States, and/or importing into the United States without authority or license the Accused Product.

46.   Defendant has directly infringed at least claim 1 of the '004 Patent by performing all the limitations of that claim. For example, claim 1 of the '004 Patent recites:

> A computer-implemented method implemented by at least one device of a content delivery system, the method comprising:

processing requests for media content from network devices to determine whether the network devices are supported by the content delivery system; and for at least one network device that is supported:

configuring a content package for media content that is requested by the network device to include code specific to a browser of the network device identified based upon one or more attributes of the network device;

causing communication of the content package to the network device; and

wherein the one or more attributes include one or more of basic operating characteristics of the at least one network device, a language attribute, a bandwidth attribute, a firewall attribute, or a permissions attribute.

47.   As in claim 1 of the '004 Patent, the Accused Product provides a content delivery system.

> We combine top curated content from Deezer's editors with the best music algorithms to help fans discover the songs, artists and albums they love.
>
> All of Deezer's users have access to music, unique features and personalised recommendations on mobile and web. Deezer's paying subscribers can enjoy unlimited, ad-free music, podcasts and more on all devices.

https://www.deezer.com/en/company/about (last visited June 7, 2022).

48.   As in claim 1 of the '004 Patent, the Accused Product processes requests for media content from network devices (*e.g.*, computers) to determine whether the network devices are supported by the content delivery system (*e.g.*, Deezer). For example, the Accused Product provides functionality to allow the streaming of media content to the browser of a computer.
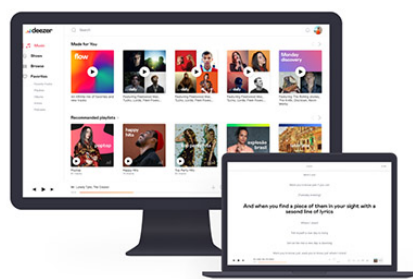
Deezer in your browser

Open your browser, go to Deezer.com, press play and turn up the volume. Enjoying great music on your computer has never been easier.

♫ Try now

https://www.deezer.com/us/devices (last visited June 7, 2020). The Accused Product supports streaming content to certain browsers.

You can even listen via your browser using our web player (supported browsers: Google Chrome, Internet Explorer, Firefox, Microsoft Edge, Safari).

https://support.deezer.com/hc/en-gb/articles/360000618605-Download-the-Deezer-app   (last visited June 7, 2022).

49.   As in claim 1 of the '004 Patent, the Accused Product configures a content package for media content (*e.g.*, an audio file) that is requested by the network device (*e.g.*, a computer) to include code specific to a browser of the network device identified based upon one or more attributes of the network device. For example, the Accused Product provides the media content to the browser based on certain specific attributes, such as language, a bandwidth attribute, and permissions attribute.

How to change your language on Deezer.com

1. Go to **Favorites** ♡
2. Go to the **Settings** menu located on your **profile**   ▲ 🐸   (next to the notification bell)
3. Tap **Account Settings**
4. Scroll down to the bottom
5. Under **Private information**, there will be a **Language** section
6. Use the **drop down menu**   Language [English   ▾]   to choose language setting
7. Click [Save]

https://support.deezer.com/hc/en-gb/articles/115003885105-Language-settings (last visited on June 7, 2022).

	Basic	Standard	High Quality*	High Fidelity*
Bit rate	64 kbit/s	128 kbit/s	320 kbit/s	1411 kbit/s
Format	mp3	mp3	mp3	FLAC

*Higher quality streams may cause stuttering during playback if your connection speed is limited.

Where do you find Audio Quality settings?

On web or desktop app

1. Audio settings are found directly in the music player at the bottom
2. Click on the **Audio** ⚙ icon
3. Select whichever of the four quality options you prefer

https://support.deezer.com/hc/en-gb/articles/115003865685-Deezer-Audio-Quality   (last   visited
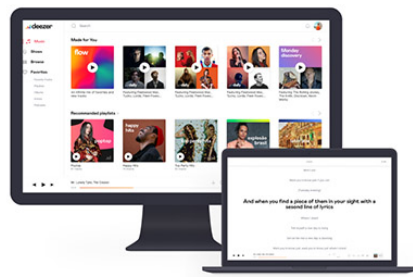
June 7, 2022).

User levels

In the territories where Deezer is already available, we manage 3 kinds of end-users.
- **Unlogged users:**
  Users who are not registered or logged in on the Deezer service.
  Cannot add a mix/album/artist as a favorite.
  Cannot create a playlist.
  30s clips **listening restrictions**.

- **Freemium users:**
  Users with a free Deezer account.
  Can add a mix/album/artist as a favorite.
  Can create a playlist.
  30s clips **listening restrictions**.

- **Premium / HiFi / Family users:**
  Users who suscribed a paid account (learn more).
  Can add a mix/album/artist as a favorite.
  Can create a playlist.
  Unlimited listening in HQ.
  Mobile access.

https://developers.deezer.com/guidelines (last visited on June 7, 2022).

50.   As in claim 1 of the '004 Patent, the Accused Product causes communication of the

content package (*e.g.*, an audio file) to the network device (*e.g.*, a computer).

https://www.deezer.com/us/devices (last visited on June 7, 2022).

51.   As in claim 1 of the '004 Patent, in the Accused Product, the one or more attributes include one or more of basic operating characteristics of the at least one network device, a language attribute, a bandwidth attribute, a firewall attribute, or a permissions attribute. For example, the Accused Product provides the media content to the browser based on certain specific attributes, such as language, a bandwidth attribute, and permissions attribute.

https://support.deezer.com/hc/en-gb/articles/115003885105-Language-settings (last visited on June 7, 2022).

	Basic	Standard	High Quality*	High Fidelity*
Bit rate	64 kbit/s	128 kbit/s	320 kbit/s	1411 kbit/s
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1. Audio settings are found directly in the music player at the bottom
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https://support.deezer.com/hc/en-gb/articles/115003865685-Deezer-Audio-Quality   (last   visited

June 7, 2022).

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In the territories where Deezer is already available, we manage 3 kinds of end-users.

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  Users with a free Deezer account.
  Can add a mix/album/artist as a favorite.
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  30s clips **listening restrictions**.

- **Premium / HiFi / Family users:**
  Users who suscribed a paid account (learn more).
  Can add a mix/album/artist as a favorite.
  Can create a playlist.
  Unlimited listening in HQ.
  Mobile access.

https://developers.deezer.com/guidelines (last visited on June 7, 2022).

52.   Defendant makes, uses, sells, and/or offers to sell the Accused Products which

practices at least claim 1 of the '004 Patent.

53.   In violation of 35 U.S.C. § 271, Defendant has been directly infringing the '004

Patent, including through its own use, testing, and sale of the Accused Products.

19

54.   Defendant has had knowledge of infringement of the '004 Patent at least as of the service of the present Complaint.

55.   Defendant has directly infringed at least one claim of the '004 Patent by making, using, offering for sale, and selling the Accused Product without authority in the United States. As a direct and proximate result of Defendant's direct infringement of the '004 Patent, DMS has been damaged.

56.   By engaging in the conduct described herein, Defendant has injured DMS and is thus liable for infringement of the '004 Patent, pursuant to 35 U.S.C. § 271.

57.   Defendant has committed these acts of infringement without license or authorization.

58.   As a result of Defendant's infringement of the '004 Patent, Plaintiff has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

59.   Plaintiff reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the claim chart that it provides with this Complaint.

DEMAND FOR JURY TRIAL

60.   DMS demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, DMS respectfully requests:

a.   That Judgment be entered that Defendant has infringed one or more claims of the '053 Patent;

b.   That Judgment be entered that Defendant has infringed one or more claims of the '004

Patent;

c.   An award of damages pursuant to 35 U.S.C. §284, sufficient to compensate Plaintiff

for the Defendant's past infringement;

d.   An assessment of pre-judgment and post-judgment interest and costs against Defendant,

together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

e.   That Defendant be directed to pay enhanced damages, including Plaintiff's attorneys'

fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

f.   That Plaintiff be granted such other and further relief as this Court may deem just and

proper.

DATED: July 8, 2022   Respectfully submitted,

                                               /s/ Mark S. Raskin w/permission Stafford Davis
                                               Mark S. Raskin
                                               Michael S. DeVincenzo
                                               Daniel Miller
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                                               New York, New York 10110
                                               (212) 319-4755
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                                               Stafford Davis
                                               State Bar No. 24054605
                                               Email: sdavis@stafforddavisfirm.com
                                               Catherine Bartles
                                               State Bar No. 24104849
                                               Email: cbartles@stafforddavisfirm.com
                                               THE STAFFORD DAVIS FIRM, PC
                                               815 S Broadway Ave
                                               Tyler, Texas 75701
                                               Phone: (903) 593-7000

Fax: (903) 705-7369

Attorneys for Plaintiff Distributed Media Solutions, LLC